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File Code: 1570-1

Appeal No.: 07-05-00-0043-A215

Date: September 18, 2007

Denise Boggs
Executive Director
Conservation Congress
P. O. Box 5
Lewistown, MT 59457

CERTIFIED - RETURN
RECEIPT REQUESTED

Dear Ms. Boggs:

On August 5, 2007, you filed a Notice of Appeal (NOA) on behalf of the Conservation Congress and Klamath Forest Alliance pursuant to 36 CFR 215 of the Shasta-Trinity National Forest Supervisor's Record of Decision (ROD) approving Alternative 1, of the Pilgrim Vegetation Management Project Final Environmental Impact Statement (FEIS) that was signed on June 1, 2007.

I have reviewed the entire appeal record, including your written Notice of Appeal (NOA), the ROD, FEIS, and supporting documentation. I have weighed the recommendation from the Appeal Reviewing Officer and incorporated it into this decision. A copy of the Appeal Reviewing Officer's recommendation is enclosed. This letter constitutes my decision on the appeal and on the specific relief requested.

FOREST ACTION BEING APPEALED

The Shasta-Trinity Forest Supervisor proposes to implement Alternative 1 of the Pilgrim Vegetation Management Project, to treat approximately 3,800 acres within an 8,500-acre assessment area. This alternative will commercially thin approximately 1200 acres of naturally occurring stands, commercially thin and remove insect-infested and diseased trees from about 1,035 acres of naturally occurring stands, commercially thin about 785 acres of planted stands, and commercially thin about 40 acres of mature pine to reduce ladder fuels and maintain the older trees. The alternative will also remove dead and dying knobcone pine trees from about 10 acres and replant with mixed conifer. Approximately 415 acres of diseased and insect infested stands will be regenerated by harvesting and replanting with a mix of conifers. Woody fuel will be reduced to decrease potential wildfire by underburning about 200 acres and tractor piling and burning about 700 acres. The project will remove conifers encroaching on oaks, aspens, and about 275 acres of dry meadow areas. Approximately .3 miles of new road and temporary road spurs will be constructed, approximately 10 miles of existing roads will be closed with guard rail barricades or earth berms, and two miles of existing roads will be decommissioned. This decision approves a non-significant amendment to the Forest Plan.



APPEAL REVIEWING OFFICER'S FINDINGS

The Appeal Reviewing Officer, Max Copenhagen, found that the Forest Supervisor's decision was appropriate and complied with existing laws, policies, and regulations. The Forest Supervisor provided information supporting the logic and rationale in selecting Alternative 1 and described the included management activities. Documentation provided by the Forest Supervisor demonstrated compliance with the Shasta-Trinity National Forest Land and Resource Management Plan and applicable laws, regulations and policies in light of your concerns about management indicator species, cumulative effects, threatened and endangered species, the Migratory Bird Treaty Act, and failure to comply with various laws and regulations. The ARO found the purpose and need for the project was clear. The Forest Supervisor was responsive to public concerns. He recommended affirmation of the Forest Supervisor's decision.

DECISION

I agree with the ARO's analysis as presented in the recommendation letter. Most of the issues in your appeal are very similar to those you raised in your comments on the DEIS and the record is adequate to support the Forest Supervisor's decision. Your concern about compliance with the Migratory Bird Treaty Act was not raised during the comment period, however the record adequately supports the Forest Supervisor's decision. All appeal issues raised have been considered.

I affirm the Forest Supervisor's decision to implement Alternative 1 described in the Record of Decision. I deny your requested relief. The project may be implemented on, but not before, the 15th business day following the date of this letter (36 CFR 215.9(b)).

My decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)].

Sincerely,

/s/ Beth G. Pendleton
BETH G. PENDLETON
Deputy Regional Forester
Appeal Deciding Officer

Enclosure



File Code: 1570-1

Date: September 12, 2007

Subject: Pilgrim Vegetation Management Project
Appeal No. 07-05-00-0043-A215
Shasta-Trinity National Forest

To: Appeal Deciding Officer

I am the designated Appeal Reviewing Officer for this appeal. This is my recommendation on disposition of the appeal filed by Denise Boggs, on behalf of Conservation Congress and Klamath Forest Alliance appealing the Shasta-Trinity National Forest (STNF) Record of Decision (ROD) for the Pilgrim Vegetation Management Final Environmental Impact Statement (FEIS) signed by Forest Supervisor J. Sharon Heywood.

BACKGROUND

Description of project - The Shasta-Trinity Forest Supervisor proposes to implement Alternative 1 of the Pilgrim Vegetation Management Project, to treat approximately 3,800 acres within an 8,500-acre assessment area. This alternative will commercially thin approximately 1,200 acres of naturally occurring stands, commercially thin and remove insect-infested and diseased trees from about 1,035 acres of naturally occurring stands, commercially thin about 785 acres of planted stands, and commercially thin about 40 acres of mature pine to reduce ladder fuels and maintain the older trees. The alternative will also remove dead and dying knobcone pine trees from about 10 acres and replant with mixed conifer. Approximately 415 acres of diseased and insect infested stands will be regenerated by harvesting and replanting with a mix of conifers. Woody fuel will be reduced to decrease potential wildfire by underburning about 200 acres and tractor piling and burning about 700 acres. The project will remove conifers encroaching on oaks, aspens, and about 275 acres of dry meadow areas. Approximately 0.3 miles of new road and temporary road spurs will be constructed, approximately 10 miles of existing roads will be closed with guard rail barricades or earth berms, and two miles of existing road will be decommissioned. This decision approves a non-significant amendment to the Forest Plan to allow less than 15% of the area to be retained in late-successional forest, due to existing mortality and disease. Healthy trees will be retained.

Scoping - The Pilgrim Vegetation Management Project has been listed in the Schedule of Proposed Actions (SOPA) since January 2004. The Notice of Intent (NOI) to prepare an EIS was published in the Federal Register on February 14, 2005. Letters, including a copy of the Notice of Intent and a map were sent to interested and affected parties, and the unit met to discuss the project with local tribes. Two field tours were offered. Additional public scoping was initiated on September 21, 2005 to allow public comment on the project specific plan amendment. Eleven written letters were received and two telephone conversations took place in response to public scoping.



Comments to the DEIS –The Notice of Availability of the Pilgrim Vegetation Management Project Draft Environmental Impact Statement (DEIS) was published in the Federal Register on June 23, 2006. The Legal Notice for Comment was published in the Redding Record Searchlight on June 28, 2006. Copies of the DEIS were mailed to agencies and interested publics. Timely comments were received from seven groups or individuals. Denise Boggs for Conservation Congress and Klamath Forest Alliance submitted timely comments, postmarked August 6, 2006, and has eligibility to appeal.

APPEAL SUMMARY

The legal notice of decision was published on June 21, 2007; the deadline for filing appeals was August 6, 2007. The appeal was filed on August 6, 2007 and is timely.

District Ranger Michael Hupp contacted appellant Denise Boggs representing Conservation Congress and the Klamath Forest Alliance to discuss informal disposition of their administrative appeal. Ms. Boggs and Ranger Hupp were not able to resolve the issues central in the appeal.

As relief the appellants request that the Pilgrim Project ROD and accompanying FEIS be reversed.

ISSUES AND RESPONSES

Issue 1: The Shasta-Trinity National Forest violated its Land and Resource Management Plan (LRMP) and the National Forest Management Act (NFMA) by failing to properly analyze and disclose effects to wildlife Management Indicator Species (MIS).

Contention A: The Shasta Trinity National Forest improperly relied upon the enjoined 2005 NFMA regulations to claim it was not required to monitor populations of MIS in the Pilgrim project area.

Response: The proposed project was guided by management direction found in the Shasta-Trinity Land and Resource Management Plan (LRMP). The Shasta-Trinity LRMP was written under the 1982 implementing regulations for the National Forest Management Act (NFMA). The NFMA directs the agency to “provide for diversity of plant and animal communities based on the suitability and capability of the specific land area”. Additionally, federal regulations mandate the Agency to “maintain viable populations of existing native and desired non-native vertebrate species in the planning area...” Thus the Shasta Trinity National Forest used the 1982 NFMA regulations and its requirement in the analysis of MIS populations and/or their habitats (FEIS, pg. 12). The Shasta-Trinity National Forest Management Indicator Assemblage Monitoring Report (in project record) describes the forest’s on-going efforts to monitor management indicator assemblages. Management indicator assemblage habitats are monitored at the forest scale, and at the 5th order watershed level. Additionally, the Migratory and Resident

Bird Population Trend Report (in project record) also provides population trend data for 240 bird species that occur on the forest.

Contention B: The Shasta Trinity National Forest erroneously claims its LRMP does not require monitoring of MIS populations and that MIS have not been identified in the LRMP.

Response: The Shasta Trinity National Forest Wildlife Management Indicator Habitat Assemblage Monitoring Report (in project record) explains the nine management indicator assemblage habitats and the use of them in a MIS analysis to determine effects from the project. These assemblages include: late-seral, openings and early successional, multi-habitat, riparian, aquatic, hardwoods, snags and down logs, chaparral, and cliffs, caves, talus and rock outcrops. Page 9 of the Report indicates that the LRMP also mandated the forest to use appropriate indicator species or their habitat components to represent the assemblages. This allows the forest to either use population trend data or key habitat components in an MIS analysis. The Shasta-Trinity NF LRMP did not select individual MIS. Rather it allows the biologist to select the appropriate species for each project-level analysis. The Shasta Trinity National Forest Migratory and Residential Bird Population Trend Report in the project record indicates that of the 359 vertebrate species (excluding fish) that occur on the National Forest, biologists maintain population trend data on 244 species. The remaining 115 species have no population trend data that is relevant to the Shasta-Trinity National Forests (FEIS, Appendix L, Project level Management Indicator Assemblage Report).

Contention C: The Shasta Trinity National Forest inappropriately chose only three species to represent MIS in the Pilgrim project and erroneously relied entirely on BBS (Breeding Bird Survey) data for two of the species.

Response: The Project Level Management Indicator Assemblage Report (FEIS, Appendix L) explains the reasoning for choosing mule deer, red-breasted nuthatch, and white-breasted nuthatch as the appropriate MIS species for this project. This section also describes the effects of the proposed project on the chosen species as a proxy of the habitat assemblages. Mule deer, red-breasted nuthatch, and white-breasted nuthatch were chosen because these species were found within the project area, the populations of these species were known to be sensitive to changes in habitat quality and that there was local confidence that there was adequate population trend data for the species (FEIS, pp. 71-84; FEIS, Appendix L, pp. L15 and L-16). Appendix L discusses in detail the availability of population trend data (over 30 years) for each chosen species. Breeding Bird Survey (BBS) data was chosen due to the availability of BBS routes within the Pilgrim Project area and within the Shasta Trinity National Forest boundary. Map 1 in Appendix L illustrates the location of BBS routes relative to the forest and the project boundaries.

I find the Forest Supervisor followed the Shasta Trinity National Forest LRMP and adhered to NFMA by analyzing and disclosing the effects of the project in the project level MIS report (FEIS, Appendix L).

Issue 2: The Shasta Trinity National Forest violated the National Environmental Policy Act (NEPA) by failing to conduct a legally sufficient cumulative effects analysis.

Response: A cumulative effect is the effect on the environment that results from the incremental effect of the action when added to the effects of other past, present and reasonably foreseeable future actions, regardless of what agency or person undertakes such actions (40 CFR 1508.7 and 1508.8, and FSH 1909.15 Section 15.1). Determination of cumulative effects for the Pilgrim project was analyzed by applying relevant spatial and temporal boundaries. The project was assessed for cumulative effects by applying relevant resource boundaries which may overlap. Different resources are affected at different scales therefore analysis boundaries may vary.

Identifying when a proposal will be implemented is important for determining where the effects of past and present actions overlap with the effects of the proposal, and establishes the timeframe for including reasonably foreseeable actions. The FEIS (pg. 34) states that the temporal scale for cumulative effects to all resources is 1996 to 2009, two years into the future when out year projects have been well enough defined to generally assess their impacts.

The area to be analyzed in a cumulative effects analysis is usually not limited to the project area, and it varies with the resource or species being analyzed. In determining the analysis area for a given resource, it is important to ensure that the area considered will provide the appropriate context for reasonable determination of effects. An analysis area that is too small may magnify effects or may miss the effects of other action, minimizing effects. An analysis area that is too large may cause results that are so spatially diluted that their cumulative sum is insignificant. Most resources used the 8th order watershed as described in Appendix F because it encompasses an area of the McCloud Flats that has very similar topography, soils, and hydrology and vegetation types. The larger 5th order watersheds were considered but generally discounted because they encompass a much larger area with very different soil, vegetation, and hydrology, and effects would be diluted (FEIS, Appendix K, pp. 1, 2, 5).

The FEIS describes the rationale for varying boundaries for cumulative effects and following are some examples:

- Forest Health cumulative effects are bounded by the Pilgrim Assessment Area, as effects outside this area do not notably influence the presence of disease and insect infestations within the area. The time frame is approximately 10 years (pg. 37).
- Vegetation diversity cumulative effects are bounded by the two 5th field watersheds, based on Forest Plan direction for assessing the existing percent of late successional forests and effects of the proposed action on those successional stages (pg. 47).
- Cumulative effects of fuels and wildfire were bounded by assessing the estimated maximum potential spotting range of a wildfire originating within the project boundary or from an outside source which could spot into the project area, determined to be 0.5 miles or less from unit perimeters (pg. 51).
- Cumulative Effects for the Northern Spotted Owl are bounded by the Critical Habitat Unit, CHU-CA2, which is approximately 89,000 acres. This area was used because there

are two other vegetation management projects currently being planned within the CHU and will overlap in time with this project (pg. 56).

- Bounding of cumulative effects for Management Indicator Assemblages (MIS) is the 8th order watershed, and temporal bounding is the last ten years (pp. 70-71). Late-seral MIS is bounded by the 5th field watersheds based on forest plan direction.
- Hydrology effects are bounded by the 8th order watershed because it best represents the hydrologic characteristics found on the McCloud Flats. A larger 5th order watershed would have included activities whose effects are not hydrologically connected to activity and do not contribute to cumulative effects due to nearly flat terrain and absence of perennial streams (pg. 97).

In addition to reference in the Pilgrim Project FEIS, direct, indirect, and cumulative effects of the Pilgrim project have been discussed in supporting project documents in the project file, including the Biological Assessment, Plant Biological Evaluation, Weed Risk Assessment, and Transportation Report.

Cumulative effects must also describe reasonably foreseeable future actions, which include those that are listed in the Forest's Schedule of Proposed Actions and those for which decisions have been made and are awaiting implementation. NFMA requires that forests should be managed to move toward a desired future condition. Forest land and resource management plans describe management areas and prescriptions without making a site-specific decision to implement an action. The Pilgrim Project FEIS (Chapter 3) describes site specific actions that are planned for implementation in the foreseeable future, while acknowledging that there are stands, roads, etc. within the project area that will be managed as part of the forest at some future time.

I find that the Forest Supervisor appropriately analyzed and disclosed cumulative effects.

Issue 3: The Shasta Trinity National Forest violated the Endangered Species Act (ESA).

Contention A: Failure to implement a program to actively recover Northern Spotted Owl (NSO) population and habitat.

Response: The Biological Opinion from U.S. Fish and Wildlife Service (FEIS, Appendix I) states, "the biological opinion outlines effects of the proposed action, including our determination that the proposed action is not likely to destroy or adversely modify designated critical habitat for the northern spotted owl. Additionally, we concur with your determination that the proposed action may affect but is not likely to adversely affect the northern spotted owl" (FEIS, Appendix I, pp. I-3). The Biological Assessment (FEIS, Appendix H, pp. H-24 to H-29) states that implementation of the proposed project may result in beneficial effects to critical habitat by producing additional potentially suitable dispersal habitat. Creating additional potentially suitable dispersal habitat is consistent with the Recovery Plan for NSO. The Biological Assessment (FEIS, Appendix H, pg. H-30) states that Northern spotted owl concerns were addressed and incorporated into the basic design criteria for the project.

Contention B: Failure to adequately account for existing cumulative effects to NSO habitat.

Response: The Biological Assessment (FEIS, Appendix H, pp. H-23 to H-29) addresses the cumulative effects of the proposed project on NSO individuals and critical habitat units (CHUs). No cumulative effects are expected for NSO individuals due to lack of species occupancy within the project area. Pages H-24 through H-29 (FEIS, Appendix H) specifically discuss cumulative effects of implementing the proposed project on NSO critical habitat. Page H-28 (FEIS, Appendix H) summarizes the cumulative effects to northern spotted owl CHU.

Cumulative effects for the Northern Spotted Owl were bounded by the Critical Habitat Unit, CHU-CA-2, which is approximately 89,000 acres. This area was used because there are two other vegetation management projects currently being planned within the CHU and will overlap in time with this project. Since 1996 the U.S. Fish and Wildlife Service has consulted on thirteen projects within the CHU-CA-2. Five minor projects had no effect on suitable NSO habitat. Five projects temporarily degraded 1400 acres of foraging habitat, 1,790 acres of marginal dispersal habitat, but none had an adverse effect on critical habitat. Three salvage sales were consulted on, and removed approximately 330 acres of dead trees that were formerly considered foraging habitat and 225 acres of dead trees that were formerly considered dispersal habitat, but were determined to have no effect to the Northern Spotted Owl (FEIS, pp. 56-57).

The FEIS disclosed improved quality in the long term by thinning over 10,000 acres of foraging and dispersal habitat, and 220 acres of diseased stands become suitable dispersal habitat into the future after regeneration. Two future projects in CHU-CA-2 were included in the cumulative effects analysis (FEIS, pp. 57-58). The greatest cumulative effect expected to NSO and its critical habitat is the loss of habitat from insect infestation and root disease in untreated stands (FEIS, pg. 58).

Contention C: Failure to survey NSO populations in the Pilgrim area.

Response: Pages H-16 and H-17 (FEIS, Appendix H) of the Biological Assessment indicate that owl observations were collected for “over 20 years” within the project area by the District Biologist. Recent surveys in 2003 and 2004 also provided data for lack of NSO use of the project area. Surveys from 2004 showed no spotted owls within 1.3 miles of the project area. Owls are not expected in the area due to unsuitable and low capability habitat conditions. Page H-18 under “Direct Effects” mention that the project area habitat is marginal, low capability, and/or unsuitable for nesting and roosting based on Habitat Capability Models and field surveys for 20 years. No direct effects and indirect effects on spotted owls are expected from project implementation due to lack of species occupancy (FEIS, pg.60). Page H-21 indicates that no suitable nesting or roosting habitat exists in the project area. Page 54 of the FEIS discloses that recent owl surveys were conducted in 2004 through 2006. Historic surveys showed that spotted owls were not found within 1.3 miles of the project area.

I find the Forest Supervisor’s decision is in compliance with the ESA.

Issue 4: The Shasta Trinity National Forest violated the Migratory Bird Treaty Act (MBTA) and Executive Order 13186.

This issue was not raised by the appellant during the public comment period.

Contention A: Failure to identify and discuss birds included in the FWS 2002 Birds of Conservation Concern lists that are affected by the Pilgrim project.

Response: Pages 10 through 14 of the Shasta Trinity National Forest Migratory and Residential Bird Population Trend Report (Pilgrim FEIS project record) identifies the Forest's responsibility. The 1998 amendment to the Fish and Wildlife Conservation Act mandated the U.S. Fish and Wildlife Service to develop the 2002 Birds of Conservation Concern (BBC) list. The purpose of the list was to identify bird species, subspecies, and populations that without additional conservation actions would likely become listed under the ESA. In accordance with the Executive Order 13186, the USFWS recommended to federal, state, and private agencies that the BCC list be reviewed to promote conservation of habitats which birds depended upon. The MOU implementing the EO expired on 1/10/2003, and no MOU has replaced this. The proposed project analyzes the effects to wildlife species in the Biological Assessment and Evaluation as required by NEPA and ESA.

Neither the MBTA nor its implementing regulations at 50 CFR Parts 10 and 20 require a specific finding for meeting the requirements of the MBTA for any federal decision. Nor is any such requirement found in the NEPA implementing regulations (40 CFR 1505.2) or Forest Service NEPA procedures (FSH 1909.15, sec. 27). Neotropical (migratory) birds were addressed on pages 84 & 85 of the FEIS with further reference to the report, Neotropical Birds in the Pilgrim Project. Several species that are included in the BCC are identified on pages H-38 through H-46 of the Biological Assessment (FEIS, Appendix H).

Contention B: Inadequate cumulative effects analysis.

Response: Pages 84-85 of the FEIS summarize the direct, indirect, and cumulative effects of the proposed project on neotropical migratory birds by saying that because the natural habitat for neotropical birds in the watershed is limited and very low quality, the cumulative effects of past actions and the proposed action are negligible. The FEIS (footnote, pg. 85) refers to a report in the project record, Neotropical Birds in the Pilgrim Project, for further information supporting the conclusion.

Contention C: Failure to minimize the intentional take of species of concern by delineating adequate standards and procedures for take.

Response: The FEIS (pp. 84-85) discuss the effects of the proposed project on neotropical migratory birds. The project area has a lack of suitable habitat for neotropical birds. No additional design criteria were implemented due the absence of migratory neotropical bird species within the project area. No intentional take of bird species is expected as a result of project implementation.

Contention D: Failure to develop and enter into the Memorandum of Understanding (MOU) mandated by EO 13186.

Response: Entering into a National MOU as mandated by Executive Order 13186 is outside the scope of this decision. The MOU implementing the Executive Order expired 1/10/2003 and no MOU has replaced it. The Forest Service continues to address migratory birds as required by NEPA and/or ESA requirements.

I find that the Forest Supervisor appropriately addressed the MBTA within the Agency's authority and did not violate E.O. 13186.

FINDINGS

Clarity of the Decision and Rationale

The Forest Supervisor's decision and supporting rationale are clearly presented in the Record of Decision. Her reasons for selecting Alternative 1 are logical and responsive to direction contained in the Shasta-Trinity National Forest Land and Resource Management Plan. The current condition of the Pilgrim project area is not consistent with desired conditions in the Forest Plan. The project was designed to address the forest health conditions that have caused significant tree mortality from insects and disease. Existing laws, regulations, and agency policies were followed.

Comprehension of the Benefits and Purpose of the Proposal

The purpose of the proposal is to improve forest health and reducing fuels as described in the Pilgrim Vegetation Management Project FEIS and ROD. The purpose is consistently considered in the formulation and development of the alternatives and in the discussions of the biological and physical effects associated with project implementation.

Consistency of the Decision with Policy, Direction, and Supporting Information

The decision is consistent with the Shasta-Trinity National Forest Land and Resource Management Plan. The analysis in the FEIS supports compliance with existing management direction and policy. The ROD and FEIS make the appropriate findings required by law to affirm the project's compliance with NFMA, ESA, Clean Water Act, Clean Air Act, and National Historic Preservation Act. The analysis uses detailed resource information related to the project.

Effectiveness of Public Participation Activities and Use of Comments

Public participation was adequate and well documented. The project was added to the quarterly Schedule of Proposed Actions. The Forest mailed scoping letters, and distributed a draft EIS to interested groups and individuals. Two field tours were offered. Responses to the comments received were detailed and included as part of the final EIS, and alternatives were developed in

response to significant issues. The decision of the Forest Supervisor indicated she considered and responded to public input.

RECOMMENDATION

My review was conducted pursuant to and in accordance with 36 CFR 215.19 to ensure the analysis and decision is in compliance with applicable laws, regulations, policy, and orders. I reviewed the appeal record, including the comments received during the comment period and how the Forest Supervisor used this information, the Appellant's objections and recommended changes.

Based on my review of the record, I recommend the Forest Supervisor's decision be affirmed on all issues. I recommend the Ms. Bogg's requested relief be denied in whole.

/s/ Max J. Copenhagen

MAX J. COPENHAGEN
Appeal Reviewing Officer
Deputy Forest Supervisor, San Bernardino National Forest